



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MNP/170124

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 15, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 10, 2015, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for any preservative-free medication she desires if she has not made specific requests for each particular drug.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The petitioner has made no specific request for any particular drug.
3. The petitioner requests that the Medicaid program pay for any preservative-free drug she believes she needs without having to request those medications individually.

## DISCUSSION

The petitioner claims she is allergic to the preservatives in medications. She seeks to have the medical assistance program pay for any preservative-free drug she believes she needs without having to make a specific request for each particular drug. This is not possible because medical assistance has different standards for approving different drugs. Some drugs need prescriptions and some don't. And some drugs are never approved. The department has lists of both drugs that are approved and are not approved. *See* Wis. Admin. Code, § DHS 107.10(1) and (4). It describes what drugs require prior authorization. *See* Wis. Admin. Code, § DHS 107.10(2). It limits the number of refills for certain drugs and the amount of doses in others. *See* Wis. Admin. Code, § DSH 107.10(3)(b) and (e).

Each time I tried to explain to this the petitioner, she replied that she needed all of her drugs to be preservative-free and she would need these for the rest of her life. This may be, but, as I also tried to explain to her, I do not have the authority to change the medical assistance program's rules. Those rules require the department to determine the need for each drug individually, and to do this it has to know what each drug it is reviewing is. Until this happens, none of the drugs the petitioner desires will be covered.

## CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no authority to grant a permanent, blanket approval for any preservative-free drug the petitioner ever desires.

**THEREFORE, it is**

## ORDERED

The petitioner's appeal is dismissed.

## **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of December, 2015

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 10, 2015.

Division of Health Care Access and Accountability